

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISIONMARK Shannon Wheeler
Ais# 139044
Plaintiff

VS.

BILL SEGREST, et al.
Defendant.

RECEIVED

CIVIL ACTION NO. CV-274-MHT

2006 OCT -2 A 10:19

SUMMARY Judgment Accompanyment

MOTION TO INCLUDE SOME FACTUAL RELIANT CASE
LAW TO PLAINTIFF'S CLAIMS IN RESPONSE

IN compliance with Fed. R. Civ. Proc. Rule 8

- i). ALL Previous Claims on which relief can be granted - Plaintiffs should be adjudicated on Merits of the implied Constitutional Claim, as Plaintiff is not an Attorney. Plaintiff Wheeler's Claims (in this Action) are Now Ripe for adjudication, and not to be restricted to the following case law alone. suggested "Determinations of undisputed fact and conclusions of LAW. Case at bar: IN NO CERTAIN ORDER, but relevant to all claims.
- a). A Prisoner has the right to be "properly" Considered for parole. Christopher V. U.S. Board of Parole, 589 F. 2d 924 (7th Cir. 1978); Wallace V. Turner, 525 F. Supp. 1072 (S.D. Fla. 1981).
- b). The Paroling authority must comply with Constitutional requirements and may not determine Parole eligibility on improper grounds. (Wallace V. Turner, supra. A parole should not be denied for false, insufficient, or capricious reasons. Christopher, supra.)
- c). A parole board may not engage in 'Flagrant or unauthorized action.' Thomas, 691 F. 2d at 489. Section 15-22-26 cannot be read as granting the Board the discretion to rely upon false information in determining whether to grant Parole. Therefore by relying on the false information in Monroe's file (Monroe V. Thigpen), the Board has exceeded its authority under Section 15-22-26 and treated Monroe arbitrarily and capriciously in violation of due process. Thomas, 691 F. 2d at 489. Moreover, the question of whether a state law creates a Federally protected right does not depend exclusively on the construction of that law by state Courts. Ellard V. Ala. Bd. of Pardons and Paroles, 824 F. 2d 937 944 & n. 7 (11th Cir. 1987), cert. denied, 485 U.S. 981, 108 S. Ct. 1280, 99 L. Ed. 2d 491 (1988).
- d). Alabama Courts have a long history of discouraging the dismissive treatment of prose Filings. Borcs V. Baxley, 621 So. 2d 240, 243-44 (Ala. 1993).

Cont:

Moreover, even if we were to take a literal form-over-substance view of prose pleading, Strong filed the Petition against the "Executive Director, Board of Pardons and Paroles, et al." Even if we were to disregard the body of the petition, and we do not, this alone should have been enough notice to the circuit court and to the respondents that Strong had, in fact, implicated the appropriate parties.

Strong v. Alabama Bd. of Pardons and Paroles 859 So. 2d 1201

Crim. App. LEXIS 303 CR-00-2212.

e). The Court of Appeals, Johnson, Circuit Judge, held that, while Alabama Parole statute did not confer liberty interest in Parole, it did not grant Alabama Board of Pardons and Parole discretion to rely upon admittedly false information in determining whether to grant Parole. Reversed and remanded with instructions Monroe v. Thigpen 932 F. 2d 1438.

f). Fourth Circuit has recognized a due process right to be fairly considered for Parole. See Paine v. Baker, 595 F.2d 197 (4th Cir.) cert. denied 444 U.S. 925, 100 S.Ct. 263, 62 L. Ed. 2d 181 (1979).

Done this the 28th day of September, 2006, Plaintiff
Wheeler Prays this above styled Court grant this forsaid
Motion. Respectfully submitted Mark S. Wheeler 139044

MARK S. Wheeler Plaintiff
Pro Se

CERTIFICATE OF SERVICE

I hereby Certify that I have placed a Copy of the same
Prepaid Postage U.S. MAIL and addressed the same and ma-
iled to the following Defendants Counsel At: Al. Bd Pardons/Paroles

TO: Asst Atty General
Steven M. Sirmon
P.O. Box 302405
Montgomery, AL 36130

1st Class, and Placed in Kilby Prison's Inmates
mail box on this the 28th day of Sept. 2006.

Mark S. Wheeler 139044
MARK S. Wheeler
Plaintiff Pro Se

SWORN TO AND SUBSCRIBED before me this the 28 day
of September, 2006, did appear Mark Shannon Wheeler.

Cynthia M. Butler
NOTARY PUBLIC

Mark Shannon Wheeler
MARK Shannon Wheeler
Plaintiff Pro Se

My Commission expires 12-15-2009

seal.